

REMARKS/ARGUMENTS

The Examiner states that the inventions of Groups 1 and 2 are related as process of making and product made under M.P.E.P. § 806.05(f) and that the product, as claimed, can be made by another and materially different process, such as the process disclosed in WO 9918137.

However, the Examiner has merely made a conclusory statement that the product, as claimed, can be made by another and materially different process, such as the process disclosed in WO 9918137 and has neither supplied the reference to Applicants for review nor cited the reference on a PTO 892. Therefore, it is submitted that the Examiner has failed to meet the burden under M.P.E.P. § 806.05(f) to sustain the Restriction Requirement and it is requested that the claims of Groups 1 and 2 be rejoined and examined in the present application.

The Examiner states that the inventions of Groups 2 and 3 are related as product and method of use under M.P.E.P. § 806.05(h) and that the process of using the product, as claimed, can be practiced with another materially different product, such as that disclosed in U.S. 45877255.

However, the Examiner has merely made a conclusory statement that the process of using the product, as claimed, can be practiced with another materially different product such as those disclosed in U.S. 45877255 and has failed to supply the reference to Applicants for review or to cite the reference on a PTO 892.

Therefore, it is submitted that the Examiner has failed to meet the burden under M.P.E.P. § 806.05(h) to sustain the Restriction Requirement and it is requested that the claims of Groups 2 and 3 be rejoined and examined in the present application.

Further, it is clear that the relationship between the claims of Groups 2 and 3 is that of combination-subcombination under M.P.E.P. § 806.05(c) and the groups are not related as

product and method of use, because the claim of Group 3 is not drawn to a process of using the product of Group 2. Since two-way distinctness is required in order to support a restriction between claims in a combination-subcombination relationship and the Examiner has not demonstrated two-way distinctness in the Restriction Requirement, it is requested that the Restriction Requirement be withdrawn and the claims of Groups 2 and 3 be examined in the present application.

Further, if the claims of Group 2 are ultimately found allowable, it is requested that the claims of Group 1 be rejoined under M.P.E.P. § 821.04 and allowed in the present application, also.


Accordingly, for the reasons presented above, it is submitted that the Patent and Trademark Office has failed to meet the burden necessary to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,

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